

only that which is old is illustrated.

Fig. 4 does not illustrate that which is old, but instead represents the processor used in the tag measurement system of the applicant's invention. See, e.g., page 9, line 15 through page 10, line 12 of the application.  $S_{R1}$  and  $S_{R2}$  in Fig. 4 are receiver output signals after anti-parallel interrogation of the fluid, unlike *Shen et al.* Moreover, *Shen et al.* is not prior art as discussed below. Accordingly, the applicant respectfully traverses the Examiner's objection to Fig. 4.

The Examiner rejects claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,293,156 to *Shen et al.* in view of U.S. Patent No. 4,528,857 to *Bruner*.

The Examiner's rejection is not valid.

The Examiner cites two U.S. patents as prior art in the rejection under §103. Before the references can be combined to form a §103 rejection, however, each of the references must qualify as a reference under §102. The *Shen et al.* reference has an issue date after the date of filing of this application. Thus, 35 U.S.C. §103(c) applies.

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an assignment to the same person".

See MPEP §706.02(l)(1).

This application was filed after November 29, 1999. Moreover, at the time of the constructive date of invention, i.e. the filing date of this application, the subject matter and the claimed invention were owned by the same person or subject to an assignment to the same person that owns the *Shen et al.* patent. As evidence thereof, the applicant submits herewith a copy of the assignment from inventor Yi Liu to Panametrics, Inc. dated October 26, 2000, Recordation Date October 30, 2000, Reel 011273, Frame 0639. As noted, the *Shen et al.* patent, cited as a

reference by the Examiner, is also owned by Panametrics, Inc. Moreover, the application incorporates by reference the specification of *Shen et al.* See this application, page 2, lines 10-18.

Thus, under 35 U.S.C. §103(c), the applicant herein is not "another person" within the meaning of §103(c).

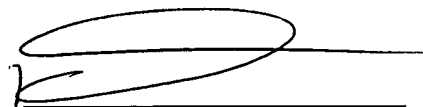
Accordingly, *Shen et al.* is not a proper reference, the Examiner's rejection is invalid, and claims 1-15 are in condition for allowance.<sup>1</sup>

### CONCLUSION

Each of the Examiner's rejections has been addressed or traversed. Accordingly, it is respectfully submitted that claims 1-15 are in condition for allowance. Early and favorable action is respectfully requested.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts at (781) 890-5678.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kirk Teska', is written over a horizontal line.

Kirk Teska  
Reg. No. 36,291

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<sup>1</sup> While subject matter that qualifies as anticipatory prior art under §102(e) may still be used to reject claims as being anticipated, the Examiner's rejection is not based on anticipation under §102, but rather obviousness under §103.